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Supreme Court of the United States.

OCTOBER TERM, 1972.

No.

NEW HAMPSHIRE BANKERS ASSOCIATION, MERCHANTS NATIONAL BANK, AMOSKEAG TRUST COMPANY, INDIAN HEAD NATIONAL BANK, BANK OF NEW HAMPSHIRE, N.A., KEENE NATIONAL BANK, STRAFFORD NATIONAL BANK AND THE EXETER BANKING COMPANY,
Plaintiffs,

v.

JAMES W. NELSON, BANK COMMISSIONER FOR THE STATE OF NEW HAMPSHIRE, AND WARREN B. RUDMAN, ATTORNEY GENERAL FOR THE STATE OF NEW HAMPSHIRE,
Defendants.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered herein.

Opinion Below.

The opinion of the Court of Appeals is attached hereto as Appendix A. It affirmed a judgment for the defendants entered by the United States District Court for the District of New Hampshire pursuant to an opinion of such District Court reported at 336 F. Supp. 1330.

Jurisdiction.

The judgment of the United States Court of Appeals was entered on May 24, 1972. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented.

1. May the State of New Hampshire prohibit the national bank plaintiffs from advertising the fact that they may serve as executors when they have been empowered to act as executors by state law and 12 U.S.C. 92a? Or otherwise stated, is not such a prohibition by the state inconsistent with the inherent rights of national banks and thereby void under the Supremacy Clause?

2. May the State of New Hampshire prohibit all plaintiff banks from advertising the fact that they may serve as executors without thereby denying such banks the equal protection of the law and the due process of law secured by the Fourteenth Amendment to the United States Constitution?

Constitutional and Regulatory Provisions Involved.

The principal constitutional provisions involved are the Supremacy Clause of the United States Constitution and

the Fourteenth Amendment (sec. 1) thereto. The principal statutory provisions are New Hampshire R.S.A. 390:13 and 12 U.S.C. 92a. These are all in Appendix B hereto.

Statement of the Case.

The plaintiffs are national banks and state-chartered trust companies located in the State of New Hampshire. Each plaintiff has an operating trust department and intends to place advertisements and distribute circulars in substantially the form shown in Appendix A to the complaint in order to publicize the fact that it may act as an executor as well as its other trust services (Complaint, ¶ 13). R.S.A. 390:13 provides, *inter alia:*

> "No such trust company or similar corporation or national bank shall advertise or circularize the fact that it is authorized to act as executor."

The Attorney General and the Bank Commissioner of the State of New Hampshire indicated that the proposed activities of the plaintiffs would result in their prosecution for violating the prohibitions of R.S.A. 390:13 (Answer, ¶ 15; Stipulation, ¶ 9). Thereupon the plaintiffs brought this complaint under 28 U.S.C. 2201 seeking a declaratory judgment that the provisions of R.S.A. 390:13 are repugnant to the Constitution and the laws of the United States on the grounds more particularly explained *infra.* The District Court sustained the validity of the statute and entered final judgment for the defendants. The plaintiffs appealed that judgment to the United States Court of Appeals for the First Circuit which affirmed the judgment of the District Court in a *per curiam* opinion and entered

judgment for the defendants on May 24, 1972. From this judgment the plaintiffs now appeal.

Reasons Relied on for the Allowance of the Writ.

This case affects all banks in New Hampshire, both national and state-chartered, which either have or intend to have trust departments. The prohibition on the effective solicitation of executorships deprives such banks of substantial business as stipulated by the parties and precludes the operation of efficient and full-service trust departments. The outcome of this case will also significantly affect national banks outside of New Hampshire. The State of Washington has an analogous statute [1] restricting the solicitation of trust business and the decision below will necessarily be considered precedent for upholding the validity of the Washington statute. In addition, the language of the Court of Appeals invites other states to impose similar restrictions on national banks.

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[1] Washington R.C.W. 30.04260:

"No trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, shall be permitted to act as executor, administrator or guardian; and any trust company or other corporation whose officers or agents shall solicit legal business *or personally solicit the appointment of such trust company or corporation as executor, administrator or guardian* shall be ineligible for a period of one year thereafter to be appointed executor, administrator or guardian in any of the courts of this state.

"Any trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, and any officer, agent or employee of any trust company or corporation who shall solicit legal business *or personally solicit the appointment of such trust company or corporation as executor, administrator or guardian* shall be guilty of a gross misdemeanor." (Emphasis added.)

The Court of Appeals in its *per curiam* opinion has blithely asserted a new principle of law with regard to national banks rooted in the outdated privilege-right dichotomy—namely, that, because a state may preclude a national bank from serving as an executor, it may regulate the conduct of such bank as an executor in any manner in which it sees fit. This doctrine, derived from no authority and articulated by the court *sua sponte* flies in the face of the clear holdings of the Supreme Court from *M'Culloch* v. *State of Maryland*, 4 Wheat. 316, 4 L. Ed. 579 (1819), to the present. Left standing, it can only encourage other state action not only in the trust area but in others (such as branch banking) where state law has been incorporated by federal statute. To say, as the Court of Appeals did, that a state may regulate a national bank trust department in any manner not involving discrimination *vis-à-vis* a state bank is to abandon the independent national banking system.

The decision of the Court of Appeals also repudiates the clear holding in *Franklin National Bank of Franklin Square* v. *New York*, 347 U.S. 373, 74 S. Ct. 550 (1954), in which this Court recognized that advertising is fundamental to the operation of a modern bank and that a national bank has a federal right to advertise all of its authorized activities. The court below purported to distinguish the *Franklin National Bank* case on the grounds that 12 U.S.C. 92a had not been enacted when the case was decided and thus the court could not have included section 92a in footnote 7 in referring to statutes where Congress has made local restrictions applicable. Nothing could be more wrong since the present language of section 92a was then contained verbatim in 12 U.S.C. 248(k) and had been in effect since 1918.

The claim of invalidity rests upon the Supremacy Clause and upon the interrelated grounds of denial of due process of law and of the equal protection of the law secured by the

Fourteenth Amendment alleged in plaintiffs' complaint. Each is discussed below.

A. R.S.A. 390:13 is Inconsistent with the Rights of National Banks Granted by Federal Law and is thereby Void under the Supremacy Clause.

In New Hampshire R.S.A. 390:13, national banks and state trust companies have been granted the authority to serve as executors in New Hampshire. The plaintiff national banks have been granted permission by either the Federal Reserve Board or the Comptroller of the Currency to conduct a trust department and to serve as executors and trustees. Complaint, ¶ 3, ¶ 5 through ¶ 8; Answer, ¶ 3, ¶ 5 through ¶ 8. The effect of R.S.A. 390:13 is, in the words of Judge Fuld, "like telling a property owner that he may produce vegetables but must not water or cultivate them." *Franklin National Bank of Franklin Square* v. *New York*, 305 N.Y. 453.

Plaintiffs submit that having the clear power to serve as executors they have a right to advertise that fact by virtue of the incidental powers granted to national banks by Congress under 12 U.S.C. 24. As the Supreme Court stated in the *Franklin National Bank* case:

> "Modern competition for business finds advertising one of the most usual and useful of weapons. We cannot believe that the incidental powers granted to national banks should be construed so narrowly as to preclude the use of advertising in any branch of their authorized business. . . . [T]hey must be deemed to have the right to advertise [their right to receive savings] . . . ." 347 U.S. at 377-378, 74 S. Ct. at 553-554.

The opinion of the District Court below stated that this statement was *dicta*. To the contrary, the court had to find

that a federal right to advertise existed in order to conclude that the New York prohibition on such advertising conflicted with federal law. While there was an element of discrimination present in the *Franklin National Bank* case, the Supreme Court in no way relied upon this factor in establishing a basic federal right to advertise. Rather, the Court viewed the right to advertise as a necessity in the modern commercial world. The plaintiffs submit a national bank may advertise its executor functions as well as its savings department.

Section 92a(a) contains the phrase "when not in contravention of State . . . law." The court below relied upon this phrase to conclude that section 92a(a) incorporated by reference all state law restrictions upon the exercise of trust powers. The legislative history of this phrase is clear --the phrase was inserted in 1918 to preclude the states from enacting statutes which specifically denied trust powers to national banks while granting them to state banks. Thus clause (b) of section 92a states:

> "Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this section."

The phrase goes only to whether a national bank may exercise trust powers at all. It does not relate to the manner in which those powers, once granted, are exercised.

That Congress did not intend the state to have such control over a national bank function is abundantly clear from the statute itself and from the legislative history. Section 92a specifically authorizes certain trust department records to be examined by state authorities, validates certain state

minimum capital requirements and permits national banks to comply with certain state security deposit requirements. If the court below is correct, there would be no need for subsections (c), (f) and (i) of section 92a. Furthermore, the specific references to two state law requirements indicates, under the doctrine of *inclusio unius est exclusio alterius*, that Congress intended that no other state law restrictions apply.

The legislative history reveals that prior to 1918 the Federal Reserve Board was empowered:

> "To grant by special permit to national banks applying therefor, when not in contravention of state or local law, the right to act as trustee, executor, administrator or registrar of stocks and bonds under such rules and regulations as the said Board may prescribe." 28 Stat. 262, Acts of 1913, c. 6.

Thus, as the Supreme Court noted in *First National Bank of Bay City* v. *Fellows ex rel. Union Trust Co.*, 244 U.S. 416, 426-427, 37 S. Ct. 734, 738 (1917), the Board had the "power to adopt rules regulating the exercise of the functions conferred . . . ." Then in 1918, Congress was confronted with judicially sanctioned discrimination against national banks' trust departments by states passing laws allowing state banks to serve as fiduciaries but expressly denying national banks that right. Consequently, Congress revised the statute and added the language now found in section 92a (b) narrowly defining the phrase "when not in contravention of State . . . law" so as to preclude such state action. There is nothing to indicate, however, that Congress intended to vest control of the exercise of such functions in the states. Rather, they specifically provided for certain state requirements to govern and otherwise left the situation to be governed by the principles of *M'Culloch* v. *State of Maryland, supra.*

Plaintiffs, naturally, admit that nondiscriminatory state requirements which do not unreasonably interfere with the operation of a national bank would be permitted under the rules established by this Court in *Hartford Steam Boiler Inspection & Insurance Co.* v. *Harrison*, 301 U.S. 459, 57 S. Ct. 838 (1937). Plaintiffs submit that the *Franklin National Bank* case holds that a restriction on advertising does unreasonably interfere with national banks and is thereby not a permissible state restriction.

B. R.S.A. 390:13 Denies to All Plaintiffs the Equal Protection of the Law and the Due Process of Law Secured by the Fourteenth Amendment.

New Hampshire has singled out banks from the class of persons authorized to act as executors and ordered a cloak of silence drawn around their ability to serve as executors. Plaintiffs submit that there is no reasonable basis for such a distinction.

The lower court suggested that prevention of monopoly was a rational basis but the facts demonstrate that in states where banks do advertise they receive little more than 25 per cent of the executorships. Stipulation, ¶ 3, ¶4 and ¶ 5. The fear of monopoly is nothing but the "fanciful conjecture" condemned by this Court in *Hartford Steam Boiler, supra.* The court also suggested that a policy favoring personal contact with the testator justified the statute; yet the court ignored the fact that banks may advertise their services as trustees—positions of long term trust requiring perhaps even more intimate knowledge of the needs of beneficiaries and donors. Nor is the fact that practicing lawyers are barred by the canons of ethics from advertising of constitutional significance. Banks as a matter of course advertise all of their other services as does any competitive business. To apply the peculiar ethics developed by the

legal profession over centuries (and for primarily intra-professional reasons) would be absurd and would not be reasonably related to the general welfare. The plaintiffs suggest that none of the rationale suggested below passes constitutional muster.

The plaintiffs also submit that this statute is arbitrary in that it bears no reasonable relation to the public welfare. Just as there is no apparent reason for restricting only banks from advertising the fact that they may serve as executors, there is no reason why the right to advertise this fact should be denied anyone. This is not an area where aesthetics, traffic problems or problems of fair trade practices come into play. Such evils have justified restrictions on billboards, signs, and price advertising by hotels,[2] but the plaintiffs ask what evil is associated with informing someone of the fact that a bank may serve as his executor? Far from being inimical to the public good, advertising by banks concerning executors serves the public well. It does so by making testators conscious of the dangers of intestacy as well as of the merits of a full-time professional corporate fiduciary. This prompts fewer intestacies, planned estates which better reflect the deceased's wishes, and even, ironically, more business for the legal profession in the drafting of such wills. In all other states this form of advertising is carried on with no definable adverse effects; indeed, the advertising of foreign banks reaches well into New Hampshire (Stipulation, ¶ 7).

The basic inconsistency in the statute further demonstrates its arbitrariness. It permits banks to advertise their services as trustees but not as executors. The plaintiffs

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[2] See, *e.g.*, *Rockingham Hotel Co., Inc.* v. *North Hampton*, 101 N.H. 441, 146 A. 2d 253 (1958); *Alper* v. *Las Vegas Hotel Ass'n*, 74 Nev. 135, 325 P. 2d 767 (1958); *Louisiana Motor Vehicle Commission* v. *Wheeling Frenchman*, 235 La. 332, 103 S. 2d 464 (1958); *J & N Corp.* v. *Green Bay*, 28 Wis. 3d 583, 137 N.W. 2d 434 (1965).

submit that there is no rational distinction between the two functions which would justify this treatment. Even the court below could offer none. This only confirms that the statute has one and only one design—the enrichment of the members of the bar.

The court below relied upon *Ferguson* v. *Skrupa*, 372 U.S. 726, 83 S. Ct. 1028 (1963), to support the contention that the fact that lawyers are favored by a statute does not mean the statute is constitutionally defective. In *Ferguson* the court correctly determined that the existence of substantial legal questions in the practice of debt adjusting justified Kansas in limiting that field to lawyers. *Ferguson* might support the proposition that nonlawyers could be denied the right to serve as executors, but it is irrelevant to the issue of whether one having that right may inform the public of that fact. *Ferguson* does not stand for the proposition that it is constitutionally acceptable to favor lawyers, but merely that certain quasi-legal functions may be reserved exclusively to members of the bar, just as certain medical functions are reserved to other groups of licensed practitioners. Note, however, that an executor need have no particular skills, and lay persons are appointed as executors as an everyday occurrence.

The plaintiffs submit that R.S.A. 390:13 is a protectionist statute passed for the exclusive benefit of the members of the bar. The day has long since passed when the economic interests of a small class can, in the guise of state regulation, be preferred to those of the public. R.S.A. 390:13 clearly violates the Fourteenth Amendment guarantees of both equal protection of the law and due process of law.

Conclusion.

The decision of the Court of Appeals means that New Hampshire banks may still not inform the public of the full

range of the services they can perform. R.S.A. 390:13 harasses and interferes with the operation of national banks and denies to all banks the due process of law and equal protection of the law guaranteed by the Constitution. We respectfully submit that the questions presented are substantial and of public importance transcending the New Hampshire experience. We respectfully request that the Supreme Court of the United States grant certiorari to review the judgment of the Court of Appeals entered in the case.

Respectfully submitted,

KIMON S. ZACHOS,
Counsel for Plaintiffs.

SHEEHAN, PHINNEY, BASS & GREEN,
WM. S. GREEN,
JON S. RICHARDSON,
Of Counsel.

Appendix A.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 72-1049.

NEW HAMPSHIRE BANKERS ASSOCIATION,
MERCHANTS NATIONAL BANK,
AMOSKEAG TRUST COMPANY,
INDIAN HEAD NATIONAL BANK,
BANK OF NEW HAMPSHIRE, N.A.,
KEENE NATIONAL BANK,
STRAFFORD NATIONAL BANK and
THE EXETER BANKING COMPANY,
PLAINTIFFS, APPELLANTS,

v.

JAMES W. NELSON, BANK COMMISSIONER
FOR THE STATE OF NEW HAMPSHIRE AND
WARREN B. RUDMAN, ATTORNEY GENERAL
FOR THE STATE OF NEW HAMPSHIRE,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Before ALDRICH, *Chief Judge*,
MCENTEE and COFFIN, *Circuit Judges*.

William S. Green, with whom *Jon S. Richardson* and *Sheehan, Phinney, Bass & Green* were on brief, for appellants.
Donald W. Stever, Jr., Assistant Attorney General, with whom *Warren B. Rudman*, Attorney General, was on brief, for appellees.

May 24, 1972.

PER CURIAM. Appellants, national and state banks and a banker's association, challenge that part of New Hampshire Revised Statutes Annotated, Chapter 390:13 which prohibits any bank from advertising or circulating the fact that it is authorized to act as an executor. The national banks and the association rely principally on the ground that the New Hampshire statute is repugnant to 12 U.S.C. § 92(a), which authorizes national banks to act as executors under certain circumstances. Additionally, all of the appellants assert due process and equal protection claims. We affirm on the basis of the thoughtful opinion below, 336 F.Supp. 1330 (D. N.H. 1972), but add a brief comment as to the claimed repugnancy.

Appellants' reliance on *Franklin National Bank* v. *New York*, 347 U.S. 373 (1954), is misplaced. The grant of federal authority there at issue, the power to receive savings deposits, 12 U.S.C. § 24, Seventh, made no reference to state law, a circumstance which the Court emphasized by contrasting it with several other sections making explicit reference to state law. 347 U.S. at 378 & n. 7. *See also First National Bank in Plant City* v. *Dickinson*, 396 U.S. 122 (1969); *First National Bank of Logan* v. *Walker Bank & Trust Co.*, 385 U.S. 252 (1966). Although § 92(a) had not been passed when *Franklin National Bank* was decided, and could not therefore have been included in the Court's footnote, it resembles the sections referred to there in that it conditions the right to act as executor on state law. Implicit in the state's power to proscribe national banks from acting as executors, we think, is the power to permit them to act as exectuors while precluding them, in a non-discriminatory way, from advertising that fact.

The judgment is affirmed.

Appendix B.

U.S. Constitution, Article VI.

. . . . . .

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

. . . . . .

U.S. Constitution, Sixth Amendment. Article XIV.

Declared Ratified July 28, 1868

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 12 U.S.C.

§ 92a. Trust powers.

(a) Authority of Comptroller of the Currency.

The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks

applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

(b) Grant and exercise of powers deemed not in contravention of State or local law.

Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this section.

(c) Segregation of fiduciary and general assets; separate books and records; access of State banking authorities to reports of examinations, books, records and assets.

National banks exercising any or all of the powers enumerating [1] in this section shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this section. The State banking authorities may have access to reports of examination made by the Comptroller of the Currency insofar as such reports relate to the trust department of such bank, but nothing in this section shall be construed as authorizing the State banking authorities to examine the books, records, and assets of such bank.

[1] So in original.

(d) Prohibited operations; separate investment account; collateral for certain funds used in conduct of business.

No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Comptroller of the Currency.

(e) Lien and claim upon bank failure.

In the event of the failure of such bank the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

(f) Deposits of securities for protection of private or court trusts; execution of and exemption from bond.

Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, national banks so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. National banks in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement. National banks shall have power to execute such bond when so required by the laws of the State.

(g) Officials' oath or affidavit.

In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in

any capacity specified in this section, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of such national bank may take the necessary oath or execute the necessary affidavit.

(h) Loans of trust funds to officers and employees prohibited; penalties.

It shall be unlawful for any national banking association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made may be fined not more than $5,000, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court.

(i) Considerations determinative of grant or denial of applications; minimum capital and surplus for issuance of permit.

In passing upon applications for permission to exercise the powers enumerated in this section, the Comptroller of the Currency may take into consideration the amount of capital and surplus of the applying bank, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served and any other facts and circumstances that seem to him proper, and may grant or refuse the application accordingly: *Provided,* That no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by State law of State banks, trust companies, and corporations exercising such powers.

(j) Surrender of authorization; board resolution; Comptroller certification; activities affected; regulations.

Any national banking association desiring to surrender its right to exercise the powers granted under this section,

in order to relieve itself of the necessity of complying with the requirements of this section, or to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, or for any other purpose, may file with the Comptroller of the Currency a certified copy of a resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Comptroller of the Currency, after satisfying himself that such bank has been relieved in accordance with State law of all duties as trustee, executory,[2] administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estate of lunatics or other fiduciary, under court, private, or other appointments previously accepted under authority of this section, may, in his discretion, issue to such bank a certificate certifying that such bank is no longer authorized to exercise the powers granted by this section. Upon the issuance of such a certificate by the Comptroller of the Currency, such bank (1) shall no longer be subject to the provisions of this section or the regulations of the Comptroller of the Currency made pursuant thereto, (2) shall be entitled to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, and (3) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section. The Comptroller of the Currency is authorized and empowered to promulgate such regulations as he may deem necessary to enforce compliance with the provisions of this section and the proper exercise of the powers granted therein. (Pub. L. 87-722, § 1, Sept. 28, 1962, 76 Stat. 668.)

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[2] So in original.

390:13 Power to Act as Fiduciary. Any trust company or similar corporation, incorporated under the laws of this state, or any national bank duly authorized and located within the state, may be appointed trustee or executor in any case where an individual can be appointed, upon the same conditions and subject to the same control requirements, and penalties. No such trust company or similar corporation or national bank shall advertise or circulate the fact that it is authorized to act as executor.

Any trust company organized under the laws of New Hampshire may be authorized and empowered to act as receiver, assignee or agent for any person, firm, association or corporation, public or private; and in all proceedings in court or elsewhere in relation to such trusts or agencies, all accounts and other papers may be signed and sworn to in behalf of the corporation by any officer duly authorized.

Nothing herein contained shall affect the rights of religious, charitable, and eleemosynary corporations organized under the laws of New Hampshire to act in fiduciary capacities, or extend to corporations other than trust companies and similar corporations, or any national bank duly authorized and located within the state, power to act in a fiduciary capacity.